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10/643,191	08/18/2003	Martha Gardner	134734	3700

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GENERAL ELECTRIC COMPANY
GLOBAL RESEARCH
ONE RESEARCH CIRCLE
BLDG. K1-3A59
NISKAYUNA, NY 12309

EXAMINER	
AHLUWALIA, NAVNEET K	
ART UNIT	PAPER NUMBER
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MARTHA GARDNER, RAJESH TYAGI, THOMAS REPOFF, ABHINANDA SARKAR, ANGSHUMAN SAHA, SHIRLEY AU, ROY WILSON, MALCOLM CRAIG WINSLOW, and MICHAEL DION

Appeal 2009-004165
Application 10/643,191
Technology Center 2100

Before JAMES D. THOMAS, HOWARD B. BLANKENSHIP, and JAY P. LUCAS, *Administrative Patent Judges*.

BLANKENSHIP, *Administrative Patent Judge*.

DECISION ON APPEAL[1]

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[1] The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the "MAIL DATE" (paper delivery mode) or the "NOTIFICATION DATE" (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF THE CASE

This is an appeal under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 1-4 and 6-28, which are all the claims remaining in the application. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

Representative Claim

25. A method, comprising:

> comparing a selected crude type and a selected refinery parameter with historical data comprising crude data related to a plurality of crude types and refinery data related to a plurality of refineries, wherein comparing a selected crude type and a selected refinery parameter comprises identifying one or more crude types and one or more refinery parameters in the historical data that are statistically similar to the selected crude type and the selected refinery parameter, respectively; and
>
> improving a refining process for the selected crude type and the selected refinery parameter based on the one or more crude types and the one or more refinery parameters identified in the comparing step.

Examiner's Rejection

Claims 1-4 and 6-28 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Phillips (US 6,792,399 B1) and Henly (EP 1 102 187 A2).

FINDINGS OF FACT

Specification

Appellants' invention relates to the refining of crude oil. In particular, the invention relates to assessing and selecting crudes and crude blends that are not of optimum quality, as well as selecting appropriate chemical treatments and conditions to minimize operating problems with processing such crudes. Spec. ¶ [0002].

Phillips

Phillips concerns techniques for forecasting the values of variables, such as the price of a share of stock or a commodity. The invention is directed to improved combination forecasting by using clusterization, by which combination forecasts can be provided using predictions obtained from a group of forecasters. Col. 1, ll. 6-11; col. 10, l. 55 - col. 11, l. 8.

PRINCIPLES OF LAW

References qualify as prior art for an obviousness determination only when analogous to the claimed invention. *In re Bigio,* 381 F.3d 1320, 1325 (Fed. Cir. 2004).

Whether a reference in the prior art is "analogous" is a fact question. Two criteria have evolved for determining whether prior art is analogous: (1) whether the art is from the same field of endeavor, regardless of the problem addressed, and (2) if the reference is not within the field of the inventor's endeavor, whether the reference still is reasonably pertinent to the particular problem with which the inventor is involved. A reference is reasonably pertinent if it is one which, because of the matter with which it

deals, logically would have commended itself to an inventor's attention in considering his problem. Thus, the purposes of both the invention and the prior art are important in determining whether the reference is reasonably pertinent to the problem the invention attempts to solve. *In re Clay*, 966 F.2d 656, 658-59 (Fed. Cir. 1992) (citations omitted).

ANALYSIS

Appellants submit that Phillips cannot be used in the rejection for obviousness because the reference represents non-analogous art. Appellants submit that Phillips is not in Appellants' field of endeavor, nor pertinent to the problem addressed by the instant application. In particular, Appellants argue there is no evidence whatsoever that the Phillips reference is pertinent to the problem of refining crude oil and assessing and optimizing crude selection to assist oil refineries in assessing and selecting crudes and crude blends that are not of optimum quality. App. Br. 14-15.

The Examiner has not responded to Appellants' argument. While analogous art can be defined broadly,[2] the Examiner has not provided any reasoning in support of why Phillips would have commended itself to an inventor in the field of crude oil refining, faced with assessing and selecting crudes and crude blends that are not of optimum quality, and selecting appropriate chemical treatments and conditions to minimize operating problems with processing such crudes.

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[2] "[A]ny need or problem known in the field of endeavor at the time of invention and addressed by the patent can provide a reason for combining the elements in the manner claimed." *KSR Int'l. Co. v. Teleflex Inc.*, 550 U.S. 398, 420 (2007)

Because the rejection does not demonstrate support in the record for the implicit finding that Phillips is analogous art, and the finding is required for each rejected claim, we do not sustain the § 103(a) rejection of any claim on appeal.

DECISION

The rejection of claims 1-4 and 6-28 under 35 U.S.C. § 103(a) as being unpatentable over Phillips and Henly is reversed.

REVERSED

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